FLATHEAD COUNTY BOARD OF ADJUSTMENT MINUTES OF MEETING FEBRUARY 7, 2006

CALL TO ORDER

The regular meeting of the Flathead County Board of Adjustment was called to order at approximately 6:00 p.m. Committee members present were, Tony Sagami, Dennis Rea, Mark Hash, Gina Klempel, and Scott Hollinger. Kirsten Holland, Nicole Lopez-Stickney and Jeff Harris represented the Flathead County Planning & Zoning Office (FCPZ).

There were approximately 30 people in the audience.

APPROVAL OF MINUTES

Sagami made a motion seconded by Hollinger to approve the minutes of January 3, 2006 as amended.

ROLL CALL

On a roll call vote the motion passed unanimously.

CONDITIONAL USE PERMIT/PICKAVANCE FCU-05-31 A request by Dennis and Louwania Pickavance for a Conditional Use Permit to construct a bowling center with a bar, casino and snack bar within the Bigfork B-3 (Community Business) Zoning District.

STAFF REPORT

Nicole Lopez-Stickney of the Flathead County Planning & Zoning Office reviewed Staff Report FCU-05-31 for the Board.

Sagami asked how far the sign had to be from the road.

Klempel asked if the Road Department had any comment about the ingress and egress.

Hash asked about the landscape buffer and inquired if there would be parking in the rear.

Sagami asked what the BLUAC had recommended. They voted 4-0 in favor, with a modified theme for the structure.

Lopez-Stickney (Staff) commented on these questions and advised the Board to condition this proposal, as necessary, to alleviate their concerns. Staff encouraged parking in the rear.

APPLICANT

Lou Pickavance and her son explained their proposal. They want to expand the bowling alley due to the bowling alley in Kalispell burning down. The public has been dispersed to C-Falls, Whitefish and Bigfork. They are not able to expand at their present location and therefore need to move. They don't want the look of a steel building, more of a western theme. It is not desirable to have parking in the back due to the lanes being there. There is a landscape buffer around the building.

They want to address the neighbor's concerns and want the project to be pleasing to the public as well. The structure will incorporate stone, metal and wood accents and the landscaping will be a western theme. They don't have a signage plan yet but it won't be "flashing"; most of the signs will be on the building and will be kept low key. They haven't talked with the Road Department regarding ingress and egress.

PUBLIC COMMENT

<u>Elizabeth Stokes</u>, <u>Pat Shiny</u>, <u>Maureen Hine</u>, and <u>Jerry</u> Thornberry are all in favor.

<u>Don Taylor</u> is opposed. Lighting is a concern for him as well as the road issue. He thinks three bars and casinos is overkill for the area. His wife is also opposed.

<u>Kathleen Johnson</u>, property owner to the west, wanted to know the landscaping plan. She is appreciative of the applicant's willingness to work with the neighbors, however she has several concerns, one being traffic. She wants to see trees planted, a guarantee for the buffer zone, and growth planted along the fence line bordering the agricultural line as to screen the building from the neighbors.

BOARD DISCUSSION

Hash wants the applicant to send a letter to MDOT regarding the ingress and egress concerns of this property.

Sagami wanted to be sure the proposed landscape buffer plan addressed neighbor's concerns without causing traffic interference.

Hash doesn't want to get too "hands on" with this project but would like staff to approve the landscape plans so it is acceptable to both the neighbors and the applicant.

This project is contingent on a subdivision, which goes before the Commissioners on Thursday, 2/9/06. Some of the landscape issues can be mitigated via this proposal through the imposition of conditions.

MOTION

Hash made a motion seconded by Hollinger to adopt Staff report FCU-05-31 as finding of fact as amended and grant the Conditional Use Permit.

CONDITIONAL USE PERMIT/BURROWS FCU-05-30

A request by Mike and Teri Burrows for a Conditional Use Permit to allow for a home occupation in an accessory structure within the Haskill Basin East, AG-20 (Agricultural, 20 acres) Zoning District. The applicants are proposing to build a singlefamily dwelling and a small cabinet construction and sales shop on their property located at 2650 East Edgewood Drive.

STAFF REPORT

Nicole Lopez-Stickney reviewed Staff Report FCU-05-30 for the board.

Hollinger said the zoning around this property is agricultural and wondered what this parcel is zoned.

APPLICANT

Mike Burrows handed out a site plan showing the natural screen and the driveway. He stated he would comply with all the regulations as Staff had stated. He commented the business will be small and unobtrusive to the neighbors. They will keep it very private and quiet. He expects a maximum of 8 extra vehicle trips per month.

Klempel asked if the Conditional Use Permit is contingent on the applicant building his accessory structure before building his home. She also asked if the fire department has been over to do a site visit.

Burrows proposed a large circular driveway for emergency vehicles.

Sagami asked about employees and signage. Burrows stated just he and his son would run this business. A large rock with writing on it will be used as signage, and will comply with the zoning regulations, not to exceed 40 feet.

PUBLIC COMMENT

Katherine Waters and Tom Waters live ½ mile north of the proposal. Tom feels this proposal is not compatible with a home occupation and doesn't meet all of the requirements of a Conditional Use Permit. He wonders if the establishment was "grand-fathered." If this permit is granted he would like it to state that traffic will not be allowed access to Haskill Basin Road.

<u>Sutton Finch</u> lives ¾ mile away on 100 acres. He is concerned about a manufacturing business existing in an AG-20 zone. He is concerned about the "erosion" of the zoning. He detests seeing more manufacturing businesses being permitted in AG-20 zoning; something like this would be better suited in a commercial zone.

<u>Betsy Finch</u> stated the business needs to be within 1/3 of the size of the home. She doesn't know the exact dimensions of the proposed building since the home has not been constructed. Changing the character of the area is her biggest concern as well as having a commercial business in an AG-20 zone.

The neighbors would like to maintain the rural feel of the area and are concerned about traffic.

APPLICANT REBUTTAL

Burrows addressed the concerns of the neighbors and stated the trucks would come down East Edgewood not Haskill Basin Road. A semi-truck would bring supplies once or twice a week. He spoke with the Road Department and has met all of the requirements. He wants the house to stand separate from the business so the business would be further away from the neighbors.

Hollinger asked if he would be manufacturing products from raw material.

Burrows answered ves.

BOARD DISCUSSION

Rea asked Staff if the parking area should be paved. He is concerned the Applicant would need 2 approach permits; one for the dwelling and one for business.

Lopez-Stickney (Staff) stated he wouldn't have to get an approach permit.

Hash referenced the definition of a home occupation in the regulations. He feels the applicant is trying to keep the rural characteristic of the neighborhood. The plan is very detailed, right down to the utility bills not exceeding that of the neighbor's.

Sagami said there is a bias for "white collar" home-based businesses as opposed to commercial businesses.

Hash stated if the business is confined to inside the structure you wouldn't be able to tell he has a business.

Hollinger wanted to know if he would be manufacturing cabinets or storing cabinets that are already built.

Burrows said he would design and build cabinets on-site.

Rea is still concerned about the parking area being paved and the applicant obtaining an approach permit from the Road Department.

Burrows spoke with the Road Department and was told he would not need an approach permit for the business.

Hash stated the Board needs to condition this proposal to address the concerns of the neighbors and the Board.

Hollinger would like a condition stating that cabinets manufactured off-site will not be sold at the proposed location.

Lopez-Stickney (Staff) said any product sold from a home occupation must be manufactured on-site. There will be no by-products hauled from the site.

Rea inquired about the home being constructed first.

Lopez-Stickney (Staff) referenced condition #6 stating the applicant would have to obtain an Administrative Conditional Use Permit to construct the accessory structure prior to building the home. Staff would need proof of the home being built first.

Hollinger asked about the comment letters included in the packets and if the people who commented were located directly next to the property.

Hash asked if the applicant would be receiving deliveries via Haskill Basin Road. He wanted the Board to condition it so he could not use that road for delivery of products.

Burrows said that would be fine.

Lighting will be standard residential lighting. Hours of operation will also be limited to 7am-6pm.

Lopez-Stickney (Staff) recommended the applicant use defensible space standards as stated in the Zoning Regulations.

Hash feels it would not be a home occupation if the applicant is required to pave the driveway. He feels this is too intrusive for the neighbors and is not comfortable talking about these extra conditions.

Lopez-Stickney (Staff) stated the application did not specify this type of delivery truck and the level of traffic, which would have significantly changed the Staff Report. This is in an agricultural zone but is not being used as such with this home occupation. Staff does not support the proposal.

Hash said the applicant is trying to make this use "fit" on his property and would hate to deny him that right.

Burrows stated having a home occupation in an accessory structure "fits". There would be a maximum of 2 trucks per week.

Sagami stated people are concerned with that much traffic. Hash said the Board is looking at the character of the neighborhood and whether it is agricultural or residential.

Lopez-Stickney (Staff) indicated the area is scattered residential. She feels the level of truck traffic it is a concern, and therefore would not recommend approval.

Rea does not want to set precedence. He wants to stay within the guidelines of the Zoning Regulations, not bend the rules.

Hash wondered if the traffic would cause a problem. If so, could the Board condition it to cut down on the dust, noise, and other issues?

Holland (Staff) is not comfortable with the fact that the Board had to talk so much about the proposal; maybe it does not meet the definition of a home occupation.

Hollinger disagrees; he can't think of a better definition of a home occupation than a Father/Son cabinet shop.

Lopez-Stickney (Staff) read the conditions for the Board as amended.

Sagami made a motion seconded by Hollinger to adopt Staff report FCU-05-30 as findings of fact as amended and grant the Conditional Use Permit.

On a roll call vote the motion passed 4-1 with Rea dissenting.

A request by Rocky Mountain Recreational Communities, LLC for a Zoning Variance to property located in the Bigfork RC-1 (Residential Cluster) Zoning district. Specifically, the variance is to Section 3.14.040(2), (minimum lot width) and Section 3.14.040(3A) (rear yard requirement setbacks) of the Flathead County Zoning Regulations.

Kirsten Holland reviewed Staff Report FZV-05-09 for the Board.

Dan Manning, applicant, said historically Harbor Village has developed several townhouse lots and has never had to come before this Board for a variance. He referenced the 1996 Master Plan and stated this area was zoned residential. Again in 1998, a plat map depicted the area as being developed with townhouses. He pointed out the Harbor Village area and said this is the last piece of property to be developed. The developers are putting in water features and contours to keep

MOTION

ROLL CALL

ZONING VARIANCE/ROCKY MOUNTAIN REC. FZV-05-09

STAFF REPORT

APPLICANT

with the characteristics of the existing neighborhood. He showed the Board some existing townhouse sites and pointed out the size of each townhouse, stating they have always designed them 10-feet apart and have never needed a variance. Manning showed the Board photos of the site and reiterated this is the last parcel to be developed. The developers want to bring it up to the same standards as past developments in Harbor Village. He pointed out specific features in the site plan and commented this is what they have always done in Harbor Village.

Sagami asked if the applicants had met with the Homeowner's Association.

Manning stated the Homeowner's Association met in August and voted on other variations and higher density development, which were voted down.

Mike Fraser, of Thomas, Dean & Hoskins, provided the Board with some of the history of Harbor Village. He became involved in 1996 and development began in 1997. Had they come in with this proposal 2 years ago they would not be coming before this Board requesting a variance. Fraser showed the Board the different phases of development and said none of these projects required a variance because of how the regulations are interpreted now as opposed to a few years ago. Fraser went through the criteria of a variance and addressed how this proposal meets each of these criteria. He said we aren't here to address the ownership of this property but rather how this proposal "works" in this area.

Hollinger asked when the interpretation changed.

Holland (Staff) said she informed the applicants of the interpretation of the regulations during the pre-application meeting.

Jeff Harris (Staff) read the definition of a lot from the Zoning Regulations and commented on how the Planning Office interprets the regulations.

The Board discussed the lot sizes and asked questions of Staff regarding the size of these lots.

Paul Sandry, of Johnson Law Firm, represented the applicants. He gave history of this particular piece of property and gave the Board a copy of a title report stating the property is owned by the applicant. He displayed a map of the area and pointed out which parcels are subject to CC&R's.

Rea interrupted Sandry stating it isn't up to the Board to determine ownership of property.

Sandry said the Staff Report made a few remarks and he wanted to refute them.

Holland (Staff) spoke with the County Attorney and was told unless a judge were to rule in a civil matter, no subdivision action or other activity can take place on this property until this ownership issue is resolved; whether the Board of Adjustment approves this variance or the Planning Board approves the subdivision, it would have no impact.

Rea said this does not concern the Board.

Jim Berry said a lot of the comment letters submitted referenced the variance request originally submitted.

Holland (Staff) explained which comment letters were mailed and why. If the Board had questions she was happy to explain.

Sagami asked Manning how the Homeowner's Association is elected and who has a vote.

Manning explained initially the Association members were elected on August 17th by the property homeowners and the developer.

PUBLIC COMMENT

<u>Tony Lorendo</u> is in favor of this project.

<u>Vince Rasmussen</u>, President of the Homeowners Association, is in favor of this project and wants the Board to hear the facts. He stated once the homeowners heard all of the facts, there were more people in favor of this project. They feel it would be a great addition to the community. He read a letter from the Planning Office stating an RC-1 residential cluster is a restricted zoning designation and there is no reason for people to be parking and/or living in their coaches on this property. The Homeowner's Association is doing their best to get all the details out to people in regards to this proposal, not the previous application.

Gee Lorendo is in favor and feels it can't be anything but good.

Bob Smith, lives in Harbor Village, is opposed to this project.

<u>Shirleen Weese</u> stated her and her husband own property directly across the street from this proposal. She feels it is difficult to get an accurate idea of what people feel since a lot

of the homeowners are seasonal. They have received comments from the homeowners who are concerned about additional traffic, parking, and the proposed density of this project. She showed a map with red dots on homeowner's properties who are opposed to this project and have sent comment letters. She pointed out how the lot size compares to existing lots. She said many people feel this is not keeping with the proposed size of the lots in the area.

Bob Smith, is opposed to this proposal. He stated the Homeowner's Association Board voted 4-1 to hire an attorney to assist them in reviewing the status of this "rally" area. The developers wanted to incorporate Lake Point into the Harbor Village Homeowner's Association, but with a different design review committee and different criteria. He handed out paperwork regarding items Staff went over. He said the legal notice showed the subject property address as 836 Canal Street, which is incorrect. He said people are afraid of how dense the units look. He handed out pictures of the lot, and said the "rally" area is gravel. He also handed out sales packets which refer to the "rally" area as a common park.

Rea mentioned he was concerned with density issues.

Holland (Staff) said the density issues will be addressed during the Planning Board meeting if the variance passes. Tonight should be focused on the setbacks and lot widths.

<u>Sam Wallingburg</u>, lives across the street from this project, is opposed. He asked to have it thrown out or he will file with the court.

<u>Charles Cough</u>, a resident of Harbor Village, is opposed. He is concerned with CC&R's and current zoning rules. He wanted the variance to be denied to help with the density issues.

<u>Gordon Phillips</u> is neither speaking for nor against it. He was a previous Homeowner's Association Board member and wanted to clarify a few things.

<u>Paula Smith</u> is opposed. She concurred with people who spoke before her.

APPLICANT REBUTTAL

Dan Manning wanted to point out this proposal is much easier and cheaper for them to do. He feels like they need to bring the land up to speed.

Sagami asked the applicant what the average size of the town home lots are.

Manning replied 7400 ft.

MOTION Hollinger made a motion seconded by Rea to adopt Staff

Report FZV-05-09 as findings of fact and grant the Zoning

Variance.

BOARD DISCUSSION Hash thinks these are very emotional issues. The CC&R's are

out of the Board's hands. He will probably vote in favor of this

motion, considering Staff recommendations.

Hollinger asked if they want all rectangular and square lots or a variety. If there are a variety of different shaped lots, do we

need standard rules to address these issues?

Sagami said they aren't talking about density. He stated if you

make density attractive, it's a fair trade.

ROLL CALL On a roll call vote the motion passed unanimously.

OLD BUSINESS None.

NEW BUSINESS None.

ADJOURNMENT The meeting was adjourned at approximately 11:00 p.m. on a

motion by Rea seconded by Klempel. The next meeting will be

held at 6:00 p.m. on March 7, 2006.

Dennis Rea, President

Nikki Carrell, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED: 4/4/06